KENTUCKY RULES OF EVIDENCE

Official Edition

Legislative Research Commission

Frankfort, Kentucky

June 1992

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Official Edition

As effective July 1, 1992

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FOREWORD AND CERTIFICATION

The Kentucky Rules of Evidence, enacted by action of the 1990 and 1992 Regular Sessions of the Kentucky General Assembly, will become effective on July 1, 1992. In order to make the text of these Rules available to the bench and bar of the Commonwealth as quickly as possible following their codification and prior to their effective date, the Legislative Research Commission has published them in this pamphlet and designated it to be an official edition of the Rules. The Rules will also be published in the rules volumes of both official editions of the *Kentucky Revised Statutes* at a later date.

To facilitate use of this printing of the Rules, a listing of repealed evidence statutes, a parallel reference table from repealed statutes to analogous provisions of the Rules, and a subject index are included, in addition to the table of contents. The Commission acknowledges the kind cooperation of The Michie Company in permitting use and modification of its copyrighted material in the preparation of the index to the Rules.

Pursuant to KRS 7.138, this is to certify that this publication contains the Kentucky Rules of Evidence, that it has been prepared in a manner acceptable to the Legislative Research Commission so as to insure fidelity of its text with the applicable enrolled bills of the General Assembly, and that, with those changes in form permitted by KRS 7.136 having been incorporated, the sections in this pamphlet are correctly printed.

Done at Frankfort, on the eighteenth day of June, 1992.

Vic Hellard, Jr.
Director
Legislative Research Commission

ATTEST: John M. Spangler
John M. Spangler
Reviser of Statutes

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KENTUCKY RULES OF EVIDENCE

Legislative Research Commission Note (7/1/92). Although denominated "rules," the elements of the Kentucky Rules of Evidence were enacted as statutes by the Kentucky General Assembly. See 1990 Ky. Acts ch. 88; 1992 Ky. Acts ch. 324. Originally codified as KRS Chapter 422A in 1990, the Kentucky Rules of Evidence were renumbered by the Reviser of Statutes, effective July 1, 1992, pursuant to 1992 Ky. Acts ch. 324, sec. 34. By an order dated May 12, 1992, the Kentucky Supreme Court "adopt[ed] so much of the Kentucky Rules of Evidence as enacted by HB 241 [1992 Ky. Acts ch. 324] as comes within the rule making power of the Court, pursuant to Ky. Const. sec. 116."

ARTICLE I.
GENERAL PROVISIONS

Rule 101 Scope.

These rules govern proceedings in the courts of the Commonwealth of Kentucky, to the extent and with the exceptions stated in KRE 1101. The rules should be cited as "KRE," followed by the rule number to which the citation relates.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 1; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 102 Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 2; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 103 Rulings on evidence.

(a) **Effect of erroneous ruling**. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, and upon request of the court stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of proof.** In case the ruling is one excluding evidence, upon request of the examining attorney, the witness may make a specific offer of his answer to the question.

(b) **Record of offer and ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) **Hearing of jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) **Motions in limine.** A party may move the court for a ruling in advance of trial on the admission or exclusion of evidence. The court may rule on such a motion in advance of trial or may defer a decision on admissibility until the evidence is offered at trial. A motion in limine resolved by order of record is sufficient to preserve error for appellate review. Nothing in this rule precludes the court from reconsidering at trial any ruling made on a motion in limine.

(e) **Palpable error.** A palpable error in applying the Kentucky Rules of Evidence which affects the substantial rights of a party may be considered by a trial court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 3; amended 1992 Ky. Acts ch. 324, sec. 1; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 104 Preliminary questions.

(a) **Questions of admissibility generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the

provisions of subdivision (b) of this rule. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) **Relevancy conditioned on fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) **Hearing of jury.** Hearings on the admissibility of confessions or the fruits of searches conducted under color of law shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) **Testimony by accused.** The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) **Weight and credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility, including evidence of bias, interest, or prejudice.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 4; amended 1992 Ky. Acts ch. 324, sec. 2; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 105 Limited admissibility.

(a) When evidence which is admissible as to one (1) party or for one (1) purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and admonish the jury accordingly. In the absence of such a request, the admission of the evidence by the trial judge without limitation shall not be a ground for complaint on appeal, except under the palpable error rule.

(b) When evidence described in subdivision (a) above is excluded, such exclusion shall not be a ground for complaint on appeal, except under the palpable error rule, unless the proponent expressly offers the evidence for its proper purpose or limits the offer of proof to the party against whom the evidence is properly admissible.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 5; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 106 Remainder of or related writings or recorded statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 6; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 107 Miscellaneous provisions.

(a) **Parol evidence.** The provisions of the Kentucky Rules of Evidence shall not operate to repeal, modify, or affect the parol evidence rule.

(b) **Effective date.** The Kentucky Rules of Evidence shall take effect on the first day of July, 1992. They shall apply to all civil and criminal actions and proceedings originally brought on for trial upon or after that date and to pretrial motions or matters originally presented to the trial court for decision upon or after that date if a determination of such motions or matters requires an application of evidence principles; provided, however, that no evidence shall be admitted against a criminal defendant in proof of a crime committed prior to July 1, 1992, unless that evidence would have been admissible under evidence principles in existence prior to the adoption of these rules.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 7; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE II.
JUDICIAL NOTICE

Rule 201 Judicial notice of adjudicative facts.

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) Generally known within the county from which the jurors are drawn, or, in a nonjury matter, the county in which the venue of the action is fixed; or

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing the jury.** The court shall instruct the jury to accept as conclusive any fact judicially noticed.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 8; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE III.
PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301 Presumptions in general in civil actions and proceedings.

In all civil actions and proceedings when not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 9; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 302 Applicability of federal law or the law of other states in civil actions and proceedings.

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which the federal law or the law of another

state supplies the rule of decision is determined in accordance with federal law or the law of the other state.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 10; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE IV.
RELEVANCY AND RELATED SUBJECTS

Rule 401 Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 11; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 402 General rule of relevancy.

All relevant evidence is admissible, except as otherwise provided by the Constitutions of the United States and the Commonwealth of Kentucky, by Acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky. Evidence which is not relevant is not admissible.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 12; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 13; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 404 Character evidence and evidence of other crimes.

(a) **Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent trait of character or of general moral character offered by an accused, or by the prosecution to rebut the same;

(2) **Character of victim generally.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, other than in a prosecution for criminal sexual conduct, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) **Character of witnesses.** Evidence of the character of witnesses, as provided in KRE 607, KRE 608, and KRE 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

(1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or

(2) If so inextricably intertwined with other evidence essential to the case that separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

(c) **Notice requirement.** In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it shall give reasonable pretrial notice to the defendant of its intention to offer such evidence. Upon failure of the prosecution to give such notice the court may exclude the evidence offered under subdivision (b) or for good cause shown may excuse the failure to give such notice and grant the defendant a continuance or such other remedy as is necessary to avoid unfair prejudice caused by such failure.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 14; amended 1992 Ky. Acts ch. 324, sec. 4; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 405 Methods of proving character.

(a) **Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to general reputation in the community or by testimony in the form of opinion.

(b) **Inquiry on cross-examination.** On cross-examination of a character witness, it is proper to inquire if the witness has heard of or knows about relevant specific instances of conduct. However, no specific instance of conduct may be the subject of inquiry under this provision unless the cross-examiner has a factual basis for the subject matter of the inquiry.

(c) **Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 15; amended 1992 Ky. Acts ch. 324, sec. 5; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 406 (Number not yet utilized.)

Rule 407 Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made an injury or harm allegedly caused by the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence in connection with the event. This rule does not require the exclusion of evidence of subsequent measures in products liability cases or when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 17; amended 1992 Ky. Acts ch. 324, sec. 6; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 408 Compromise and offers to compromise.

Evidence of:

(1) Furnishing or offering or promising to furnish; or

(2) Accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 18; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 409 Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 19; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 410 Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) A plea of guilty which was later withdrawn;

(2) A plea of nolo contendere in a jurisdiction accepting such pleas, and a plea under Alford v. North Carolina, 394 U.S. 956 (1969);

(3) Any statement made in the course of formal plea proceedings, under either state procedures or Rule 11 of the Federal Rules of Criminal Procedure, regarding either of the foregoing pleas; or

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible:

(A) In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(B) In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 20; amended 1992 Ky. Acts ch. 324, sec. 7; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 411 Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 21; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 412 Rape and similar cases—Admissibility of victim's character and behavior.

(a) **Reputation or opinion.** Notwithstanding any other provision of law, in a criminal prosecution under KRS Chapter 510 or for attempt or conspiracy to commit an offense defined in KRS Chapter 510, or KRS 530.020, reputation or opinion evidence related to the sexual behavior of an alleged victim is not admissible.

(b) **Particular acts and other evidence.** Notwithstanding any other provision of law, in a criminal prosecution under KRS Chapter 510, or KRS 530.020, or for attempt or conspiracy to commit an offense defined in KRS Chapter 510,

evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence is admitted in accordance with subdivision (c) and is:

(1) Evidence of past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury;

(2) Evidence of past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which an offense is alleged; or

(3) Any other evidence directly pertaining to the offense charged.

(c) (1) **Motion to offer evidence.** If the person accused of committing an offense described above intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case.

(2) **Hearing on motion.** The motion described in the preceding paragraph shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of KRE 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) **Findings and order.** If the court determines on the basis of the hearing described in the preceding paragraph

that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) **Definition.** For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the offense being tried is alleged to have occurred.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 22; amended 1992 Ky. Acts ch. 324, sec. 29; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE V.
PRIVILEGES

Rule 501 General rule.

Except as otherwise provided by Constitution or statute or by these or other rules promulgated by the Supreme Court of Kentucky, no person has a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 23; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 502 (Number not yet utilized.)

Rule 503 Lawyer-client privilege.

(a) **Definitions.** As used in this rule:

(1) "Client" means a person, including a public officer, corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) "Representative of the client" means:

(A) A person having authority to obtain professional legal services, or to act on advice thereby rendered on behalf of the client; or

(B) Any employee or representative of the client who makes or receives a confidential communication:

(i) In the course and scope of his or her employment;

(ii) Concerning the subject matter of his or her employment; and

(iii) To effectuate legal representation for the client.

(3) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized to engage in the practice of law in any state or nation.

(4) "Representative of the lawyer" means a person employed by the lawyer to assist the lawyer in rendering professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General rule of privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(2) Between the lawyer and a representative of the lawyer;

(3) By the client or a representative of the client or the client's lawyer or a representative of the lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Among lawyers and their representatives representing the same client.

(c) **Who may claim the privilege.** The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) **Exceptions.** There is no privilege under this rule:

(1) **Furtherance of crime or fraud.** If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) **Claimants through same deceased client.** As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by transaction inter vivos;

(3) **Breach of duty by a lawyer or client.** As to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer;

(4) **Document attested by a lawyer.** As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; and

(5) **Joint clients.** As to a communication relevant to a matter of common interest between or among two (2) or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 25; amended 1992 Ky. Acts ch. 324, sec. 8; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 504 Husband-wife privilege.

(a) **Spousal testimony.** The spouse of a party has a privilege to refuse to testify against the party as to events occurring after the date of their marriage. A party has a privilege to prevent his or her spouse from testifying against the party as to events occurring after the date of their marriage.

(b) **Marital communications.** An individual has a privilege to refuse to testify and to prevent another from testifying to any confidential communication made by the individual to his or her spouse during their marriage. The privilege may be asserted only by the individual holding the privilege or by the holder's guardian, conservator, or personal representative. A communication is confidential if it is made privately by an individual to his or her spouse and is not intended for disclosure to any other person.

(c) **Exceptions**. There is no privilege under this rule:

(1) In any criminal proceeding in which sufficient evidence is introduced to support a finding that the spouses conspired or acted jointly in the commission of the crime charged;

(2) In any proceeding in which one (1) spouse is charged with wrongful conduct against the person or property of:

(A) The other;

(B) A minor child of either;

(C) An individual residing in the household of either; or

(D) A third person if the wrongful conduct is committed in the course of wrongful conduct against any of the individuals previously named in this sentence. The court may refuse to allow the privilege in any other proceeding if the interests of a minor child of either spouse may be adversely affected; or

(3) In any proceeding in which the spouses are adverse parties.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 26; amended 1992 Ky. Acts ch. 324, sec. 9; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 505 Religious privilege.

(a) **Definitions**. As used in this rule:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the person and a clergyman in his professional character as spiritual adviser.

(c) **Who may claim the privilege**. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 27; amended 1992 Ky. Acts ch. 324, sec. 10; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 506 Counselor-client privilege.

(a) **Definitions.** As used in this rule:

(1) A "counselor" includes:

(A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;

(B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;

(C) A drug abuse counselor, who is a person employed by a drug abuse and education center licensed by the Kentucky Cabinet for Human Resources pursuant to KRS Chapter 210; and

(D) An alcohol abuse counselor, who is a person employed by a licensed hospital, or treatment facility licensed by the Kentucky Cabinet for Human Resources pursuant to KRS Chapter 222.

(2) A "client" is a person who consults or is interviewed by a counselor for the purpose of obtaining professional services from the counselor.

(3) A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.

(b) **General rule of privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.

(c) **Who may claim the privilege**. The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person's employer) may claim the privilege in the absence of the client, but only on behalf of the client.

(d) **Exceptions**. There is no privilege under this rule for any relevant communication:

(1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

(2) If the judge finds:

(A) That the substance of the communication is relevant to an essential issue in the case;

(B) That there are no available alternate means to obtain the substantial equivalent of the communication; and

(C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 28; amended 1992 Ky. Acts ch. 324, sec. 11; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 507 Psychotherapist-patient privilege.

(a) **Definitions**. As used in this rule:

(1) A "patient" is a person who, for the purpose of securing diagnosis or treatment of his or her mental condition, consults a psychotherapist.

(2) A "psychotherapist" is:

(A) A person licensed by the state of Kentucky, or by the laws of another state, to practice medicine, or reasonably believed by the patient to be licensed to practice medicine, while engaged in the diagnosis or treatment of a mental condition;

(B) A person licensed or certified by the state of Kentucky, or by the laws of another state, as a psychologist, or a person reasonably believed by the patient to be a licensed or certified psychologist; or

(C) A clinical social worker, licensed by the State Board of Examiners of Social Work and holding a certificate of

qualification for the independent practice of clinical social work.

(3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are present during the communication at the direction of the psychotherapist, including members of the patient's family.

(4) "Authorized representative" means a person empowered by the patient to assert the privilege granted by this rule and, until given permission by the patient to make disclosure, any person whose communications are made privileged by this rule.

(b) **General rule of privilege**. A patient, or his authorized representative, has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purpose of diagnosis or treatment of his mental condition, between the patient, the patient's psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(c) **Exceptions**. There is no privilege under this rule for any relevant communications under this rule:

(1) In proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) If a judge finds that a patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of an examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient's mental condition; or

(3) If the patient is asserting his mental condition as an element of a claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 29; amended 1992 Ky. Acts ch. 324, sec. 12; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 508 Identity of informer.

(a) **General rule of privilege.** The Commonwealth of Kentucky and its sister states and the United States have a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) **Who may claim.** The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) **Exceptions:**

(1) **Voluntary disclosure; informer as a witness.** No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed by the holder of the privilege or by the informer's own action, or if the informer appears as a witness for the state. Disclosure within a law enforcement agency or legislative committee for a proper purpose does not waive the privilege.

(2) **Testimony on relevant issue.** If it appears that an informer may be able to give relevant testimony and the public entity invokes the privilege, the court shall give the public entity an opportunity to make an in camera showing in support of the claim of privilege. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavits. If the court finds that there is a reasonable probability that the informer can give relevant testimony, and the public entity elects not to disclose this identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one (1) or more of the following:

(A) Requiring the prosecuting attorney to comply;

(B) Granting the defendant additional time or a continuance;

(C) Relieving the defendant from making disclosures otherwise required of him;

(D) Prohibiting the prosecuting attorney from introducing specified evidence; and

(E) Dismissing charges.

(d) In civil cases, the court may make any order the interests of justice require if the informer has pertinent

information. Evidence presented to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 30; amended 1992 Ky. Acts ch. 324, sec. 13; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 509 Waiver of privilege by voluntary disclosure.

A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privilege matter. This rule does not apply if the disclosure itself is privileged. Disclosure of communications for the purpose of receiving third-party payment for professional services does not waive any privilege with respect to such communications.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 31; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 510 Privileged matter disclosed under compulsion or without opportunity to claim privilege.

A claim of privilege is not defeated by a disclosure which was:

(1) Compelled erroneously; or

(2) Made without opportunity to claim the privilege.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 32; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 511 Comment upon or inference from claim of privilege—Instruction.

(a) **Comment or inference not permitted.** The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(b) **Claiming privilege without knowledge of jury.** In jury cases, proceedings shall be conducted, to the extent

practicable, so as to facilitate the assertion of claims of privilege without the knowledge of the jury.

(c) **Jury instruction.** Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 33; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE VI.
WITNESSES

Rule 601 Competency.

(a) **General.** Every person is competent to be a witness except as otherwise provided in these rules or by statute.

(b) **Minimal qualifications.** A person is disqualified to testify as a witness if the trial court determines that he:

(1) Lacked the capacity to perceive accurately the matters about which he proposes to testify;

(2) Lacks the capacity to recollect facts;

(3) Lacks the capacity to express himself so as to be understood, either directly or through an interpreter; or

(4) Lacks the capacity to understand the obligation of a witness to tell the truth.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 34; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 602 Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of KRE 703, relating to opinion testimony by expert witnesses.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 35; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 603 Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 36; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 604 Interpreters.

An interpreter is subject to the provisions of these rules relating to qualifications of an expert and the administration of an oath or affirmation to make a true translation.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 37; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 605 Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 38; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 606 Competency of juror as witness.

A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. No objection need be made in order to preserve the point.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 39; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 607 Who may impeach.

The credibility of a witness may be attacked by any party, including the party calling the witness.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 40; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 608 Evidence of character.

Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to the limitation that the evidence may refer only to general reputation in the community.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 41; amended 1992 Ky. Acts ch. 324, sec. 14; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 609 Impeachment by evidence of conviction of crime.

(a) **General rule.** For the purpose of reflecting upon the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record if denied by the witness, but only if the crime was punishable by death or imprisonment for one (1) year or more under the law under which the witness was convicted. The identity of the crime upon which conviction was based may not be disclosed upon cross-examination unless the witness has denied the existence of the conviction. However, a witness against whom a conviction is admitted under this provision may choose to disclose the identity of the crime upon which the conviction is based.

(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction unless the court determines that the probative value of the conviction substantially outweighs its prejudicial effect.

(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 42; amended 1992 Ky. Acts ch. 324, sec. 15; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 610 Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 43; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 611 Mode and order of interrogation and presentation.

(a) **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross-examination.** A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the trial court may limit cross-examination with respect to matters not testified to on direct examination.

(c) **Leading questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination, but only upon the subject matter of the direct examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 44; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 612 Writing used to refresh memory.

Except as otherwise provided in the Kentucky Rules of Criminal Procedure, if a witness uses a writing during the course of testimony for the purpose of refreshing memory, an adverse party is entitled to have the writing produced at the trial or hearing or at the taking of a deposition, to

inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 45; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 613 Prior statements of witnesses.

(a) **Examining witness concerning prior statement.** Before other evidence can be offered of the witness having made at another time a different statement, he must be inquired of concerning it, with the circumstances of time, place, and persons present, as correctly as the examining party can present them; and, if it be in writing, it must be shown to the witness, with opportunity to explain it. The court may allow such evidence to be introduced when it is impossible to comply with this rule because of the absence at the trial or hearing of the witness sought to be contradicted, and when the court finds that the impeaching party has acted in good faith.

(b) This provision does not apply to admissions of a party-opponent as defined in KRE 801A.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 46; amended 1992 Ky. Acts ch. 324, sec. 16; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 614 Calling and interrogation of witnesses by court.

(a) **Calling by court.** The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) **Interrogation by court.** The court may interrogate witnesses, whether called by itself or by a party.

(c) **Interrogation by juror.** A juror may be permitted to address questions to a witness by submitting them in

writing to the judge who will decide at his discretion whether or not to submit the questions to the witness for answer.

(d) **Objections.** Objections to the calling of witnesses by the court, to interrogation by the court, or to interrogation by a juror may be made out of the hearing of the jury at the earliest available opportunity.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 47; amended 1992 Ky. Acts ch. 324, sec. 17; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 615 Exclusion of witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order on its own motion. This rule does not authorize exclusion of:

(1) A party who is a natural person;

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 48; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE VII.
OPINIONS AND EXPERT TESTIMONY

Rule 701 Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(a) Rationally based on the perception of the witness; and

(b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 49; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 702 Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 50; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 703 Bases of opinion testimony by experts.

(a) The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

(b) If determined to be trustworthy, necessary to illuminate testimony, and unprivileged, facts or data relied upon by an expert pursuant to subdivision (a) may at the discretion of the court be disclosed to the jury even though such facts or data are not admissible in evidence. Upon request the court shall admonish the jury to use such facts or data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.

(c) Nothing in this rule is intended to limit the right of an opposing party to cross-examine an expert witness or to test the basis of an expert's opinion or inference.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 51; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 704 (Number not yet utilized.)

Rule 705 Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 53; amended 1992 Ky. Acts ch. 324, sec. 18; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 706 Court appointed experts.

(a) **Appointment.** The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may require the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) **Compensation.** Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportions and at such time as the court directs, and thereafter charged in like manner as other costs.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 54; amended 1992 Ky. Acts ch. 324, sec. 19; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE VIII.
HEARSAY

Rule 801 Definitions.

(a) **Statement.** A "statement" is:

(1) An oral or written assertion; or

(2) Nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.** A "declarant" is a person who makes a statement.

(c) **Hearsay.** "Hearsay" is a statement, other than one

made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 55; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 801A Prior statements of witnesses and admissions.

(a) **Prior statements of witnesses.** A statement is not excluded by the hearsay rule, even though the declarant is available as a witness, if the declarant testifies at the trial or hearing and is examined concerning the statement, with a foundation laid as required by KRE 613 and the statement is:

(1) Inconsistent with the declarant's testimony;

(2) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or

(3) One of identification of a person made after perceiving the person.

(b) **Admissions of parties.** A statement is not excluded by the hearsay rule, even though the declarant is available as a witness, if the statement is offered against a party and is:

(1) The party's own statement, in either an individual or a representative capacity;

(2) A statement of which the party has manifested an adoption or belief in its truth;

(3) A statement by a person authorized by the party to make a statement concerning the subject;

(4) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(5) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(c) **Admission by privity:**

(1) **Wrongful death.** A statement by the deceased is not excluded by the hearsay rule when offered as evidence against the plaintiff in an action for wrongful death of the deceased.

(2) **Predecessors in interest.** Even though the declarant is available as a witness, when a right, title, or interest in any property or claim asserted by a party to a civil action requires a determination that a right, title, or interest existed in the declarant, evidence of a statement made by the declarant during the time the party now claims the declarant was the holder of the right, title, or interest is not excluded by the hearsay rule when offered against the party if the evidence would be admissible if offered against the declarant in an action involving that right, title, or interest.

(3) **Predecessors in litigation.** Even though the declarant is available as a witness, when the liability, obligation, or duty of a party to a civil action is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a party to a civil action is barred or diminished by a breach of duty by the declarant, evidence of a statement made by the declarant is not excluded by the hearsay rule when offered against the party if the evidence would be admissible against the declarant in an action involving that liability, obligation, duty, or breach of duty.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 55; amended 1992 Ky. Acts ch. 324, sec. 20; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 802 Hearsay rule.

Hearsay is not admissible except as provided by these rules or by rules of the Supreme Court of Kentucky.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 57; amended 1992 Ky. Acts ch. 324, sec. 21; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 803 Hearsay exceptions: availability of declarant immaterial.

The following are not excluded by the hearsay rules, even though the declarant is available as a witness:

(1) **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) **Excited utterance.** A statement relating to a startling event or condition made while the declarant was

under the stress of excitement caused by the event or condition.

(3) **Then existing mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) **Statements for purposes of medical treatment or diagnosis.** Statements made for purposes of medical treatment or diagnosis and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to treatment or diagnosis.

(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(A) **Foundation exemptions.** A custodian or other qualified witness, as required above, is unnecessary when the evidence offered under this provision consists of medical charts or records of a hospital that has elected to proceed

under the provisions of KRS 422.300 to 422.330, business records which satisfy the requirements of KRE 902(11), or some other record which is subject to a statutory exemption from normal foundation requirements.

(B) **Opinion.** No evidence in the form of an opinion is admissible under this paragraph unless such opinion would be admissible under Article VII of these rules if the person whose opinion is recorded were to testify to the opinion directly.

(7) **Absence of entry in records kept in accordance with the provisions of paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or other data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public records and reports.** Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or other data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

(A) Investigative reports by police and other law enforcement personnel;

(B) Investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; and

(C) Factual findings offered by the government in criminal cases.

(9) **Records of vital statistics.** Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements or law.

(10) **Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter

of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with KRE 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) **Records of religious organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationships by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices or a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) **Family records.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) **Records of documents affecting an interest in property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) **Statements in documents affecting an interest in property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) **Statements in ancient documents.** Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(17) **Market reports, commercial publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) **Learned treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation concerning personal or family history.** Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) **Reputation concerning boundaries or general history.** Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) **Reputation as to character.** Reputation of a person's character among associates or in the community.

(22) **Judgment of previous conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment under the law defining the crime, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused.

(23) **Judgment as to personal, family, or general history, or boundaries.** Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 58; amended 1992 Ky. Acts ch. 324, sec. 22; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 804 Hearsay exceptions: declarant unavailable.

(a) **Definition of unavailability**. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the declarant's statement;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) **Hearsay exceptions**. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) **Former testimony**. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) **Statement under belief of impending death**. In a criminal prosecution or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or

circumstances of what the declarant believed to be his impending death.

(3) **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) **Statements of personal or family history.**

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 59; amended 1992 Ky. Acts ch. 324, sec. 23; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 805 Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 60; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 806 Attacking and supporting credibility of declarant.

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would

be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 61; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE IX.
AUTHENTICATION AND IDENTIFICATION

Rule 901 Requirement of authentication or identification.

(a) **General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) **Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) **Testimony of witness with knowledge.** Testimony that a matter is what it is claimed to be.

(2) **Nonexpert testimony on handwriting.** Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for the purposes of litigation.

(3) **Comparison by trier or expert witness.** Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) **Distinctive characteristics and the like.** Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) **Voice identification.** Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) **Telephone conversations.** Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular place or business if:

(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the phone.

(7) **Public records or reports.** Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) **Ancient documents or data compilation.** Evidence that a document or data compilation, in any form:

(A) Is in such condition as to create no suspicion concerning its authenticity;

(B) Was in a place where it, if authentic, would likely be; and

(C) Has been in existence twenty (20) years or more at the time it is offered.

(9) **Process or system.** Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) **Methods provided by statute or rule.** Any method of authentication or identification provided by act of the General Assembly or by rule prescribed by the Supreme Court of Kentucky.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 62; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 902 Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) **Domestic public documents under seal.** A document bearing a seal purporting to be that of the United States, or of any state, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or

the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) **Domestic public documents not under seal.** A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) of this rule, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) **Foreign public documents.** A document purporting to be executed, or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature of official position:

(A) Of the executing or attesting person; or

(B) Of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation.

A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) **Official records.** An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by an official having the legal custody of the record. If the office in which the record is kept is outside the Commonwealth of Kentucky, the attested copy shall be accompanied by a certificate that the official attesting to the accuracy of the copy has the authority to do so. The certificate accompanying domestic records (those from offices within the territorial jurisdiction of the United States) may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the

court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of office. The certificate accompanying foreign records (those from offices outside the territorial jurisdiction of the United States) may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of office. A written statement prepared by an official having the custody of a record that after diligent search no record or entry of a specified tenor is found to exist in the records of the office, complying with the requirements set out above, is admissible as evidence that the records of the office contain no such record of entry.

(5) **Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

(6) **Books, newspapers, and periodicals.** Printed materials purporting to be books, newspapers, or periodicals.

(7) **Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) **Acknowledged documents.** Documents accompanied by a certificate of acknowledgement executed in the manner provided by law before a notary public or other officer authorized by law to take acknowledgements.

(9) **Commercial paper and related documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by the general commercial law.

(10) **Documents which self-authenticate by the provisions of statutes or other rules of evidence.** Any signature, document, or other matter which is declared to be presumptively genuine by Act of Congress or the General Assembly of Kentucky or by rule of the Supreme Court of Kentucky.

(11) **Business records.**

(A) Unless the sources of information or other circumstances indicate lack of trustworthiness, the original or a duplicate of a record of regularly conducted activity within the scope of KRE 803(6) or KRE 803(7), which the custodian thereof certifies:

(i) Was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(ii) Is kept in the course of the regularly conducted activity; and

(iii) Was made by the regularly conducted activity as a regular practice.

(B) A record so certified is not self-authenticating under this paragraph unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.

(C) As used in this paragraph, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury, and, with respect to a foreign record, a written declaration which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position:

(i) Of the individual executing the certificate; or

(ii) Of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual.

A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by an officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of office.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 63; amended 1992 Ky. Acts ch. 324, sec. 24; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 903 Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 64; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE X.
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001 Definitions.

For purposes of this article the following definitions are applicable:

(1) **Writings and recordings.** "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) **Photographs.** "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) **Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) **Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 65; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1002 Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules, in other rules adopted by the Kentucky Supreme Court, or by statute.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 66; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1003 Admissibility of duplicates.

A duplicate is admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original; or

(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 67; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1004 Admissibility of other evidence of contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) **Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(2) **Original not obtainable.** No original can be obtained by any available judicial process or procedure; or

(3) **Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 68; amended 1992 Ky. Acts ch. 324, sec. 25; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1005 Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed with a governmental agency, either federal, state, county, or municipal, in a place where official records or documents are ordinarily filed, including data compilations in any form, if otherwise admissible, may be proved by copy,

certified as correct in accordance with KRE 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 69; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1006 Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. A party intending to use such a summary must give timely written notice of his intention to use the summary, proof of which shall be filed with the court. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 70; renumbered (71/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1007 Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 71; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1008 Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of KRE 104. However, when an issue is raised:

(a) Whether the asserted writing ever existed;

(b) Whether another writing, recording, or photograph produced at the trial is the original;

(c) Whether other evidence of contents correctly reflects the contents, the issue is for the trier to fact to determine as in the case of other issues of fact.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 72; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

ARTICLE XI.
MISCELLANEOUS RULES

Rule 1101 Applicability of rules.

(a) **Courts.** These rules apply to all the courts of this Commonwealth in the actions, cases, and proceedings and to the extent hereinafter set forth.

(b) **Proceedings generally.** These rules apply generally to civil actions and proceedings and to criminal cases and proceedings, except as provided in subdivision (d) of this rule.

(c) **Rules on privileges.** The rules with respect to privileges apply at all stages of all actions, cases, and proceedings.

(d) **Rules inapplicable.** The rules (other than with respect to privileges) do not apply in the following situations:

(1) **Preliminary questions of fact.** The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under KRE 104.

(2) **Grand jury.** Proceedings before grand juries.

(3) **Small claims.** Proceedings before the small claims division of the District Courts.

(4) **Summary contempt proceedings.** Contempt proceedings in which the judge is authorized to act summarily.

(5) **Miscellaneous proceedings.** Proceedings for extradition or rendition; preliminary hearings in criminal cases; sentencing by a judge; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 73; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1102 Amendments.

(a) **Supreme Court.** The Supreme Court of Kentucky shall have the power to prescribe amendments or additions to the Kentucky Rules of Evidence. Amendments or additions shall not take effect until they have been reported to the Kentucky General Assembly by the Chief Justice of the Supreme Court at or after the beginning of a regular session of the General Assembly but not later than the first day of March, and until the adjournment of that regular session of the General Assembly; but if the General Assembly within that time shall by resolution disapprove any amendment or addition so reported it shall not take effect. The effective date of any amendment or addition so reported may be deferred by the General Assembly to a later date or until approved by the General Assembly. However, the General Assembly may not disapprove any amendment or addition or defer the effective date of any amendment or addition that constitutes rules of practice and procedure under Section 116 of the Kentucky Constitution.

(b) **General Assembly.** The General Assembly may amend any proposal reported by the Supreme Court pursuant to subdivision (a) of this rule and may adopt amendments or additions to the Kentucky Rules of Evidence not reported to the General Assembly by the Supreme Court. However, the General Assembly may not amend any proposals reported by the Supreme Court and may not adopt amendments or additions to the Kentucky Rules of Evidence that constitute rules of practice and procedure under Section 116 of the Constitution of Kentucky.

(c) **Review of proposals for change.** Neither the Supreme Court nor the General Assembly should undertake to amend or add to the Kentucky Rules of Evidence without first obtaining a review of proposed amendments or additions from the Evidence Rules Review Commission described in KRE 1103.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 74; amended 1992 Ky. Acts ch. 324, sec. 26; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1103 Evidence rules review commission.

(a) The Chief Justice of the Supreme Court or a designated justice shall serve as chairman of a permanent Evidence Rules Review Commission which shall consist of the Chief Justice or a designated justice, one (1) additional member of the judiciary appointed by the Chief Justice, the chairman of the Senate Judiciary Committee, the chairman of the House Judiciary Committee, and five (5) members of the Kentucky bar appointed to four (4) year terms by the Chief Justice.

(b) The Evidence Rules Review Commission shall meet at the call of the Chief Justice or a designated justice for the purpose of reviewing proposals for amendment or addition to the Kentucky Rules of Evidence, as requested by the Supreme Court or General Assembly pursuant to KRE 1102. The Commission shall act promptly to assist the Supreme Court or General Assembly and shall perform its review function in furtherance of the ideals and objectives described in KRE 102.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 75; amended 1992 Ky. Acts ch. 324, sec. 27; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

Rule 1104 Use of official commentary.

The commentary accompanying the Kentucky Rules of Evidence may be used as an aid in construing the provisions of the Rules, but shall not be binding upon the Court of Justice.

Effective Date: July 1, 1992

History: Enacted 1990 Ky. Acts ch. 88, sec. 76; amended 1992 Ky. Acts ch. 324, sec. 28; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34.

PARALLEL REFERENCE TABLE BETWEEN REPEALED EVIDENCE STATUTES AND THE KENTUCKY RULES OF EVIDENCE

KRS	KRE
218A.260	Rule 508
233.060	Cf. Rule 404
242.390	Cf. Rule 404
319.111	Rule 507
335.170	Rule 507
362.200	- - - - - - -
411.330	Rule 407
421.160	Cf. Rule 804
421.170	Cf. Rule 804
421.200	Rule 601
421.210	Cf. Rules 501 to 511
421.215	Rule 507
421.2151	Rule 506
421.216	Rule 506
421.220	Cf. Rules 607, 608, 609
421.355	Cf. Rules 801A to 804
422.010	Rule 201
422.020	Cf. Rule 902
422.030	Cf. Rule 902
422.050	Cf. Rule 902
422.060	Rule 201
422.070	Rule 201
422.080	Cf. Rule 902
422.081	Rule 201
422.082	Rule 201
422.083	Rule 201
422.084	Rule 201
422.085	Rule 201
422.086	Rule 201
422.087	Rule 201
422.100	Cf. Rule 902
422.105	Cf. Rule 1003
422.106	- - - - - - -
422.120	Rule 901
422.150	Rule 804
422A.0406	- - - - - - -
422A.0502	- - - - - - -

422A.0704	- - - - - - -
423.120	Cf. Rule 902
510.145	Rule 412

Note: This table has been prepared as a convenience to users of this printing of the Kentucky Rules of Evidence. It is provided for informational purposes only and should not be considered to be official or authoritative in nature.

EVIDENCE STATUTES REPEALED WITH ADOPTION OF KENTUCKY RULES OF EVIDENCE

218A.260	Controlled substances—Violations—Use of confidential informants.
233.060	Evidence of general reputation admissible.
242.390	Reputation of defendant admissible in evidence.
319.111	Communications privileged.
335.170	Confidentiality of information—Exceptions.
362.200	Partnership bound by admission of partner.
411.330	Admissibility of certain evidence.
421.160	Oral examination of prisoners—Depositions.
421.170	Control of prisoner during taking of deposition.
421.200	Competency of witnesses generally.
421.215	Psychiatrist-patient privilege—Limitations.
421.2151	Privileged communication between sexual assault counselor and victim.
421.216	School counselor-student counselee communications—Immunity from disclosure.
421.210*	Person not to testify in his own behalf—Exceptions.
421.220	Other objections to witnesses go to credit.
421.355	Admissibility of victim's out-of-court statements.
422.010	Judicial notice of legislative acts—Official signatures.
422.020	Copies of domestic records or documents admissible in evidence.
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Statutes not followed by an asterisk were repealed by 1990 Ky. Acts ch. 88, sec. 92.

Statutes followed by an asterisk were repealed by 1992 Ky. Acts ch. 324, sec. 30.

The repeal of KRS 447.030, "Acts and compilations of former laws, evidence," by 1990 Ky. Acts ch. 88, sec. 92, was repealed by 1992 Ky. Acts ch. 324, sec. 31.

INDEX TO THE KENTUCKY RULES OF EVIDENCE

This index represents a renumbering of entries for the former KRS Chapter 422A contained in the General Index (1990), Volumes 19 and 20 of *Kentucky Revised Statutes Annotated, Official Edition*, by The Michie Company of Charlottesville, Virginia, copyright 1990. Permission from The Michie Company to use this material for this publication is gratefully acknowledged.

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